UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/1993/5
10 June 1993

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL,
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic,
Social and Cultural Rights

CANADA

1. The Committee considered the second periodic report of Canada concerning the rights covered by articles 10 to 15 of the International Covenant on Economic, Social and Cultural Rights (E/1990/6/Add.3) at its 5th and 6th meetings held on 17 and 18 May 1993 and adopted 1/ the following concluding observations:

A. Introduction

2. The Committee commends the State party on its excellent report which contains detailed and complete information on the legal framework for the implementation of the rights under consideration, on the manner of interpretation and application of many of the respective laws by the Canadian courts, as well as on the programmes and initiatives designed to realize economic, social and cultural rights. The Committee welcomes the extensive statistical data provided by the Government and appreciates the considerable efforts made to provide further information in reply to the questions submitted in writing. The Committee notes with satisfaction the detailed explanation given by the delegation of Canada to all questions raised by the Committee, as well as the fact that several ministries, departments and agencies had been consulted in the course of the preparation of the report.

1/ At the 18th meeting (eighth session), held on 27 May 1993.

3. Finally, the Committee is very appreciative of the constructive manner in which the delegation referred to the contributions of Canadian non-governmental organizations to the Committee's review of the implementation of the Covenant in Canada.

B. Positive aspects

4. The Committee notes with satisfaction the general strengthening of the protection of human rights in Canada through the Canadian Charter of Rights and Freedoms and through improvements of other human rights legislation. The Committee was informed that the Charter of Rights and Freedoms guarantees, in section 7, the right to security of the person and in section 15, the equal benefit and protection of the law. It notes with satisfaction that Canadian courts have applied these provisions to cover certain economic and social rights, and that the Supreme Court of Canada has, on occasion, turned to the International Covenant on Economic, Social and Cultural Rights for guidance as to the meaning of provisions of the Charter.

5. The Committee notes, in particular, that the courts have applied section 15 of the Charter to extend parental benefits and security of tenure in the field of housing. The Committee was informed that the process of interpretation of the Charter is still in its early stages, but that its provisions and the interpretations adopted by the Supreme Court in early cases suggest that Canadian courts will give full consideration to the rights in the Covenant when interpreting and applying the Canadian Charter of Rights and Freedoms.

6. The Committee received information on the Court Challenges Programme which has, in the past, enabled disadvantaged groups or individuals to take important test cases before the courts. Recognizing the importance of effective legal remedies against violations of social, economic and cultural rights, and of remedying the conditions of social and economic disadvantage of the most vulnerable groups and individuals, the Committee highly commends the State party for having developed such a programme.

7. The Committee notes with satisfaction that the State party has made significant progress in many areas covered by articles 10-15. It notes improvements to maternity and parental benefits and important initiatives to prevent child abuse and neglect and address domestic violence. It notes that a child tax credit has been introduced to assist low income families.

8. The Committee notes with satisfaction that the poverty rate among elderly couples has declined significantly over the last decade, primarily because of the positive effect of the Old Age Security Programme and the Guaranteed Income Supplement.

9. The Committee notes with satisfaction that Canadians as a whole enjoy a high standard of health care, with a health care system which is based on universality and accessibility. The Committee notes that infant mortality rates among Canadians have declined, particularly among aboriginal Canadians, a group which previously had extremely high infant mortality rates.

C. Factors and difficulties impeding the application of the Covenant

10. The State party reported no fundamental difficulties impeding the application of the Covenant, although it was noted that Canada has been affected by the recent recession. By the same token it enjoyed one of the highest rates of economic growth during the 1980s.

11. On a technical level, the State party reported that it takes considerable time to compile information requested by the Committee because of the involvement of 10 provinces and 2 territories in most of the areas covered by the Covenant.

D. Principal subjects of concern

12. In view of the obligation arising out of article 2 of the Covenant to apply the maximum of available resources to the progressive realization of the rights recognized in the treaty, and considering Canada's enviable situation with regard to such resources, the Committee expresses concern about the persistence of poverty in Canada. There seems to have been no measurable progress in alleviating poverty over the last decade, nor in alleviating the severity of poverty among a number of particularly vulnerable groups.

13. In particular the Committee is concerned about the fact that, according to information available to it, more than half of the single mothers in Canada, as well as a large number of children, live in poverty. The State party has not outlined any new or planned measures to remedy this situation. Of particular concern to the Committee is the fact that the federal Government appears to have reduced the ratio of its contributions to cost-sharing agreements for social assistance.

14. The Committee received information from non-governmental organizations about families being forced to relinquish their children to foster care because of inability to provide adequate housing or other necessities.

15. The Committee is concerned that there seems to exist no procedure to ensure that those who must depend entirely on welfare payments do not thereby derive an income which is at or above the poverty line.

16. A further subject of concern for the Committee is the evidence of hunger in Canada and the reliance on food banks operated by charitable organizations.

17. The Committee is concerned that the right to security of tenure is not enjoyed by all tenants in Canada.

18. The Committee learned from non-governmental organizations of widespread discrimination in housing against people with children, people on social assistance, people with low incomes, and people who are indebted. Although prohibited by law in many of Canada's provinces, these forms of discrimination are apparently common. A more concerted effort to eliminate such practices would therefore seem to be in order.

19. The Committee notes the omission from the Government's written report and oral presentation of any mention of the problems of homelessness. The

Committee regretted that there were no figures available from the Government on the extent of homelessness, on the numbers of persons evicted annually throughout the country, on the lengths of waiting lists or the percentage of houses accessible to people with disabilities.

20. Given the evidence of homelessness and inadequate living conditions, the Committee is surprised that expenditures on social housing are as low as 1.3 per cent of Government expenditures.

21. The Committee is concerned that in some court decisions and in recent constitutional discussions, social and economic rights have been described as mere "policy objectives" of governments rather than as fundamental human rights. The Committee was also concerned to receive evidence that some provincial governments in Canada appear to take the position in courts that the rights in article 11 of the Covenant are not protected, or only minimally protected, by the Charter of Rights and Freedoms. The Committee would like to have heard of some measures being undertaken by provincial governments in Canada to provide for more effective legal remedies against violations of each of the rights contained in the Covenant.

22. The Committee was very concerned to learn that the "Court Challenges Programme" has been cancelled.

23. The Committee is concerned to learn that in a few cases, courts have ruled that the right to security of the person in the Charter does not protect Canadians from social and economic deprivation, or from infringements of their rights to adequate food, clothing and housing.

24. The Committee is concerned that provincial human rights legislation has not always been applied in a manner which would provide improved remedies against violations of social and economic rights, particularly concerning the rights of families with children, and the right to an adequate standard of living, including food and housing.

E. Suggestions and recommendations

25. The Committee recommends the incorporation in human rights legislation of more explicit reference to social, economic and cultural rights.

26. The Committee recommends a concerted Government action to eliminate the need for food banks.

27. The Committee recommends the extension of security of tenure to all tenants and draws the attention of the State party to its General Comment No. 4 on the Right to Adequate Housing (article 11-1 of the Covenant), in particular paragraph 8.

28. The Committee recommends that the federal Government implement the recommendations of the Standing Committee on Human Rights and the Status of Disabled Persons, of June 1992, to restore the "Court Challenges Programme", and that funding also be provided for Charter challenges by disadvantaged Canadians to provincial legislation.

29. In recognition of the increasingly important role played by the courts in ordering remedial action against violations of social and economic rights, the Committee recommends that the Canadian judiciary be provided with training courses on Canada's obligations under the Covenant and on their effect on the interpretation and application of Canadian law.

30. The Committee encourages the Canadian courts to continue to adopt a broad and purposive approach to the interpretation of the Charter of Rights and Freedoms and of human rights legislation so as to provide appropriate remedies against violations of social and economic rights in Canada.

31. The Committee recommends that the key governmental bodies concerned enter into a dialogue at the domestic level with the representatives of the Canadian non-governmental organizations that have presented information to the Committee.

32. Finally, the Committee requests the Canadian Government to inform the Committee of any developments and measures taken with regard to the issues raised and recommendations made in paragraphs 14 to 32 of the present concluding observations.